

OPEN MEETING ITEM

ORIGINAL

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



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ARIZONA CORPORATION COMMISSION

DATE: NOVEMBER 25, 2009

DOCKET NO: W-02113A-07-0551

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Order on:

CHAPARRAL CITY WATER COMPANY, INC.
(ORDER AMENDING DECISION NO. 71308 *NUNC PRO TUNC* AND
APPROVING TEMPORARY SURCHARGE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 27, 2009

The parties have waived the 10 days for filing of exceptions

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

NOVEMBER 30, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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Arizona Corporation Commission

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION
9 OF CHAPARRAL CITY WATER
10 COMPANY, INC., AN ARIZONA
11 CORPORATION, FOR A DETERMINATION
12 OF THE FAIR VALUE OF ITS UTILITY
13 PLANT AND PROPERTY AND FOR
14 INCREASES IN ITS RATES AND CHARGES
15 FOR UTILITY SERVICE BASED THEREON.

DOCKET NO. W-02113A-07-0551

DECISION NO. _____

ORDER AMENDING
DECISION NO. 71308
NUNC PRO TUNC AND
APPROVING A TEMPORARY
SURCHARGE

11 Open Meeting
12 November 30, 2009
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On October 21, 2009, the Arizona Corporation Commission ("Commission") issued
20 Decision No. 71308 in the above-captioned matter.

21 2. On October 30, 2009, Chaparral City Water Company, Inc. ("Company" or "CCWC")
22 docketed a Notice of Compliance to which was attached its full tariff incorporating the revised
23 schedule of rates and charges approved in Decision No. 71308.

24 3. On November 2, 2009, the Company docketed a Notice of Filing Corrected Tariff
25 Page.

26 4. On November 3, 2009, the Company filed a Motion for Order Amending Decision No.
27 71308 *Nunc Pro Tunc* ("Motion") to correct an error in the approved rates. The Company stated that
28 the approved rates fall short, by \$490,041, of yielding the revenue requirement approved in Decision

1 No. 71308. The Motion stated that the Company believes the error in rates is the result of an
2 erroneous computation, which can be corrected by means of a procedural order, and that no hearing is
3 necessary because the Company had been in contact with the Commission's Utilities Division
4 ("Staff") and agreed with Staff's proposal to correct the rates. However, the Company also stated in
5 the Motion that "Staff's proposal is problematic in several respects." The Company expressed
6 dissatisfaction with Staff's proposal to correct the entire revenue shortfall through commodity rates
7 rather than through both monthly minimum charges and commodity rates. The Motion also requested
8 that if corrected rates cannot be implemented by November 20, 2009, a surcharge be approved to
9 recover the revenue shortfall, together with interest at a rate of 10 percent per annum, over a period of
10 six months.

11 5. On November 5, 2009, a Procedural Order was issued directing the parties to respond
12 to the Motion. The Procedural Order directed the parties to discuss in their responses how the
13 Commission should address the Motion, including whether the Motion should be treated as an
14 application for rehearing pursuant to A.R.S. § 40-253. The parties were further directed to address
15 whether the computational error referred to in the Motion had been contained in or reflected in the
16 Recommended Opinion and Order ("ROO") docketed on September 23, 2009, and considered by the
17 Commission at the October 8, 2009, Open Meeting of the Commission, resulting in Decision No.
18 71308.

19 6. On November 10, 2009, Staff and the Residential Utilities Consumer Office
20 ("RUCO") filed responses to the Motion. Intervenor Pacific Life Insurance Company dba Eagle
21 Mountain Golf Club ("Pacific Life") did not file a response.

22 7. In its response, RUCO stated that it does not oppose the Motion, that it is not
23 necessary to invoke A.R.S. § 40-253 to correct a computational error, and that the issue could be
24 addressed pursuant to A.R.S. § 40-252 instead. RUCO did not address whether the computational
25 error was present in the ROO. RUCO pointed out that under Staff's proposal to correct the shortfall,
26 as set forth in the Motion, revenue from all classes would be derived 39 percent from monthly
27 minimum charges and 61 percent from commodity charges, while the Company's requested change
28 would generate revenue 41 percent from monthly minimum charges and 59 percent from commodity

1 charges. RUCO stated that it does not object to either means of addressing the revenue shortfall.

2 8. In its response, Staff requested that the Commission grant rehearing pursuant to
3 A.R.S. § 40-253 on the issue of the revenue shortfall produced by the approved rates. Staff further
4 recommended denial of the Company's request for a surcharge with interest. Staff stated that the
5 computational error had been present in the ROO, because the Staff rate design adopted in the ROO
6 did not incorporate the proper billing determinants for certain customers.

7 9. On November 10, 2009, the Company filed an Application for Rehearing pursuant to
8 A.R.S. § 40-253, requesting rehearing on five issues, including the computational error in the
9 approved rates adopted in Decision No. 71308.

10 10. On November 12, 2009, the Company filed a response to its Motion. Therein, the
11 Company stated that it is simply asking that the revenue shortfall created by the approved rates be
12 addressed promptly and that it believes, based on the lack of dispute over the revenue shortfall, that
13 further proceedings are unnecessary. The Company stated that it is willing to accept the rate design
14 proposed by Staff, which places the increase necessary to remedy the revenue shortfall in commodity
15 rates only, and that it believes an order amending the Decision to authorize the rates proposed by
16 Staff, as set forth in the Motion, is appropriate.

17 11. On November 24, 2009, at a Commission Staff Meeting, the Commission voted to
18 grant the November 10, 2009, Application for Rehearing filed by the Company and Staff's request
19 for rehearing contained in its November 10, 2009, response to the Motion, in order to allow time for
20 further consideration. As to matters related to correct the alleged errors in rates, the Commission
21 directed the Hearing Division to prepare a Recommended Order or Procedural Order for Commission
22 consideration and whether the corrections should date back to the date of Decision No. 71308. The
23 Commission withheld making any determinations as to any other issues raised, until after the
24 Commission has considered an Order addressing correcting alleged errors in the rates.

25 12. Due to an error in the billing determinants underlying the rate design adopted by
26 Decision No. 71308, the rates approved therein were erroneous, in that they were not sufficient to
27 collect the revenue requirement approved in the Decision.

28 13. It is just and reasonable and in the public interest to issue an Order *Nunc Pro Tunc*

1 correcting the rates to address the revenue shortfall produced by the computational error present in
2 the rate design approved in Decision No. 71308.

3 14. Staff proposed changes in commodity rates to correct the revenue shortfall. Staff's
4 proposed changes were set forth on page 4 of the Motion and consist of replacing all of the
5 commodity rates in the Decision as follows:

6 a) Replace all commodity rates appearing as \$2.19 with \$2.25;

7 b) Replace all commodity rates appearing as \$2.65 with \$2.90; and

8 c) Replace all commodity rates appearing as \$3.15 with \$3.55.

9 15. The parties' responses to the Motion reflect that no party to this case objects to the
10 Staff-proposed corrections to the rates set forth above.

11 16. Staff's proposed corrections to the Company's commodity rates, set forth above, are a
12 just, reasonable, and equitable means of correcting the erroneous rates approved in Decision No.
13 71308.

14 17. Decision No. 71308 should be corrected, *nunc pro tunc*, to reflect rates that will
15 collect the revenues approved in the Decision, as follows:

16 a) Replace all commodity rates appearing as \$2.19 with \$2.25;

17 b) Replace all commodity rates appearing as \$2.65 with \$2.90; and

18 c) Replace all commodity rates appearing as \$3.15 with \$3.55.

19 18. The Company filed a tariff in compliance with Decision No. 71308 on October 30,
20 2009. The Company should be required to file corrected tariff pages replacing those existing tariff
21 pages as necessary to reflect the corrected commodity rates.

22 19. The corrected commodity rates in Decision No. 71308 should be effective for all
23 service rendered on and after October 15, 2009. Therefore, the Company should be authorized to
24 institute a surcharge for all customers paying commodity rates, over a period of six months, to collect
25 the difference between the revenues collected due to the erroneous rates and the amount that would
26 have been collected under the corrected commodity rates.

27 20. The computational error that resulted in the approval of erroneous rates was present in
28 the ROO. No party filed exceptions to the ROO objecting to the erroneous rates. Had the Company

1 filed exceptions noting the error, the Commission could have addressed the error prior to issuance of
2 Decision No. 71308. Because the Company did not avail itself of this opportunity, it would be
3 inequitable to allow it to collect interest on the difference in revenues collected. The Company's
4 request for collection of interest on the revenue shortfall should therefore be denied.

5 21. This Order should not be interpreted as making any determination on any issue raised
6 by the Company's November 10, 2009, Application for Rehearing other than that of the erroneous
7 rates approved by Decision No. 71308 due to a rate design computational error.

8 CONCLUSIONS OF LAW

9 1. The Company is a public service corporation within the meaning of Article XV of the
10 Arizona Constitution and A.R.S. §§ 40-250, 40-251, and 40-253.

11 2. The Commission has jurisdiction over the Company and the subject matter of the
12 Company's Application for Rehearing and Staff's request for rehearing contained in its November
13 10, 2009, response to the Motion.

14 3. Due to a computational error, the rates approved in Decision No. 71308 are erroneous
15 in that they fail to collect the revenue requirement approved in that Decision.

16 4. Staff's proposed changes to the Company's commodity rates, as set forth in Findings
17 of Fact No. 14 above, are a just, reasonable, and equitable means of correcting the erroneous rates
18 approved in Decision No. 71308.

19 5. Decision No. 71308 should be corrected, *nunc pro tunc*, to reflect the corrected
20 commodity rates proposed by Staff.

21 6. It is just, reasonable, and in the public interest to allow the Company to collect the
22 revenue shortfall produced to date by the erroneous rates approved in Decision No. 71308 through
23 means of a surcharge assessed, over a period of six months, to all customers charged commodity
24 rates.

25 7. It is not just, reasonable, or in the public interest to allow the Company to collect
26 interest on the shortfall.

27 ORDER

28 IT IS THEREFORE ORDERED that the Application for Rehearing filed by Chaparral City

1 Water Company on November 10, 2009, is hereby granted in order to allow time for further
2 consideration.

3 IT IS FURTHER ORDERED that this Decision makes no determination on any issue raised
4 by the Company's November 10, 2009, Application for Rehearing other than the issue of the
5 erroneous rates approved in Decision No. 71308 due to a rate design computational error.

6 IT IS FURTHER ORDERED that Decision No. 71308 is hereby corrected, *nunc pro tunc*, as
7 follows:

- 8 a) All commodity rates appearing as \$2.19 are replaced with \$2.25;
- 9 b) All commodity rates appearing as \$2.65 are replaced with \$2.90; and
- 10 c) All commodity rates appearing as \$3.15 are replaced with \$3.55.

11 IT IS FURTHER ORDERED that Chaparral City Water Company shall file, by December 15,
12 2009, corrected tariff pages to replace its existing tariff pages filed on October 30, 2009, as necessary
13 to reflect the corrected commodity rates set forth in the Ordering Paragraph above.

14 IT IS FURTHER ORDERED that Chaparral City Water Company is hereby authorized to
15 assess a temporary surcharge, for a period of six months, on all customers paying commodity rates, to
16 collect the difference in revenues between what would have been collected to date if the corrected
17 commodity rates set forth above had been charged for service effective October 15, 2009, and the
18 revenues actually collected to date under the erroneous rates approved in Decision No. 71308.

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1 IT IS FURTHER ORDERED that Chaparral City Water Company's request to collect interest
2 on the revenue shortfall is hereby denied.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN _____ COMMISSIONER

8
9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of
16 Phoenix, this _____ day of _____, 2009.

17 _____
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21
22
23 DISSENT _____

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